



LABOR WORKS

A Publication of the Kentucky Labor Cabinet

It appears from the many economic development announcements by Governor Steve Beshear and the recent revenue and unemployment reports that Kentucky is on the road to recovery from the recent recession.

That being said, we still have much to do to ensure that our workforce is prepared to meet the challenges of the new economy.

The Kentucky Labor Cabinet has been working with the Kentucky Workforce Development Board in drafting **Kentucky's Strategic Plan for Workforce Development**. This plan, which can be viewed at www.kwib.ky.gov, is a comprehensive plan developed by members of the board, committees, stakeholder groups, partners and customers of the workforce system.



Mark S. Brown
Secretary Of Labor

One provision of the plan for which the Labor Cabinet has long been an advocate is Registered Apprenticeship programs. These programs have been around for hundreds of years and are proven to be a critical tool in the development of a skilled workforce. Workers can obtain skills through a structured program of both on-the-job and related classroom training that is specific to the industry need.

If you have an interest in the Registered Apprenticeship program, I ask that you join me at Kentucky Dam Village on September 11 and 12 for the 2011 Kentucky Apprenticeship Conference. This conference leads into the 34th Kentucky Labor-Management Conference, which will be held September 13-15, 2011, and will be a great opportunity to network with people interested in workforce issues. Hope you will join us!



Click the link below
for information on
both conferences



www.labor.ky.gov

After the Division of OSH Compliance (Division) has received an employer's *written* notice of contest, it will send the employer written notice of receipt and that the file has been forwarded to the Office of General Counsel (Office) for processing and assignment to an attorney who represents the cabinet. The Office will send the contest to the Kentucky Occupational Safety and Health Review Commission (Commission) which assigns the contest a number and returns it to the Office. The assigned cabinet attorney has 20 days to file a Complaint with the Commission. After the complaint is filed (mailed), the employer has 15 days to file an Answer, also with the Commission.

After the Complaint and the Answer have been filed with the Commission, the Commission sends the case to the Office of the Attorney General's Division of Administrative Hearings for assignment to a hearing officer. Once a hearing officer has been assigned, a notice is sent to the attorney for the cabinet and the employer's representative scheduling a telephonic, prehearing conference. The cabinet is always represented by an attorney and the employer can represent himself or herself at these conferences. Witness and exhibit lists and motions can be submitted by a sole owner or a partner but employer corporations or LLCs must have an attorney perform these duties. Incorporated or LLC employers must also be represented by an attorney at the hearing. When some of the cabinet attorneys send the complaint they include language in the cover letter that filing any pleading may constitute the unauthorized practice of law so the issue can come up before the employer files an answer.

Settlement negotiations can take place with the attorney for the cabinet at any time after the written notice of contest has been filed. If the case is settled, the labor cabinet attorney will draft a settlement agreement containing the terms of the settlement for signature by the employer representative.

If the case is not settled, it goes to a hearing before the hearing officer. Kentucky Rules of Procedure and Kentucky Rules of Evidence apply in these hearings. Both sides present their cases through witnesses and exhibits which are recorded by a court reporter. After the court reporter submits the transcripts of the hearing, post-hearing briefs are written. The hearing officer considers the testimony and exhibits introduced at the hearing, transcript, and written briefs before he or she files a Findings of Fact and Conclusions of Law and Recommended Order with the Commission. The Commission will send the hearing officer's finding, conclusions and recommended order to the parties. Recommended Order to the parties attached to the hearing officer's recommendations. Either party can request a review (an appeal) of the hearing officer's Recommended Order or the Commission can call it up on its own for review. If neither party appeals nor the Commission call for review, the hearing officer's Recommended Order becomes a final order after the 40 day appeal period runs.

If the Recommended Order is appealed, the Commission will usually request additional briefs and sometimes requests the parties address specific issues. The Commission will consider the briefs and the record and file its Decision and Order of the Review Commission with both parties. Either party can request a review of the Commission's Order with the Franklin Circuit Court within 30 days. If neither party appeals, the Commission's Order becomes a final order after the 30-day appeal period runs.

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This process can be repeated with the Kentucky Court of Appeals and finally to the Kentucky Supreme Court. Some cases can last years as they travel through the administrative and court systems.

Dealing With The Heat!

Office of Federal-State Coordinator

Summer is officially here and in Kentucky, summer is synonymous with high temperatures and humidity, two (2) of the primary components that contribute to heat-related deaths and illnesses. Consequently, employers must ensure that employees are protected from the hazards associated with heat stress.

Each year thousands of outdoor workers experience heat related illness, which often manifests itself as heat exhaustion. If not quickly addressed, heat exhaustion can become heat stroke which killed more than thirty (30) workers last year. To aid employers in the prevention of heat stress, the Kentucky Occupational Safety and Health (OSH) Program **has joined in OSHA's campaign to educate employers and employees about the hazards of working outdoors in the heat along with the steps needed to prevent heat-related illnesses.** As part of the campaign, OSHA posted a new [Heat Illness Webpage \(www.osha.gov/SLTC/heatillness/index.html\)](http://www.osha.gov/SLTC/heatillness/index.html) that includes educational materials in English and Spanish, such as worksite and community posters, fact sheets for workers, a public service announcement, videos, and a heat index Smartphone application.

The Kentucky OSH Program emphasizes two (2) key provisions for the prevention of heat stress related illnesses.

Provision of water. Most individuals exposed to hot conditions drink fewer fluids than needed because of an insufficient thirst drive. A worker should not depend on thirst to signal when and how much to drink. Instead, the worker should drink five (5) to seven (7) ounces of fluids every fifteen (15) to twenty (20) minutes to replenish necessary fluids in the body.

Adequate rest. Regular rest breaks also aid workers in hot environments, whether the heat exposure occurs indoors or out. When the work is performed outdoors shaded break areas provide workers with necessary relief from the sun.

Employers who provide access to adequate water supplies and rest breaks are well on their way to protecting employees from serious injury or illness due to potential deadly heat and humidity.

The Labor Cabinet's mission is to administer Kentucky's workplace standards and workers' compensation laws through education, mediation, adjudication and enforcement, in order to promote safe, healthful and quality working environments for employees and employers; to foster cooperative relationships between labor and management; and to promote fair compensation.

Workers' Compensation Turns 100

Workers' Compensation turns 100 in 2011. Several states enacted workers' compensation acts in 1911; however, Wisconsin claims to have the first workers' compensation act found to be constitutional.



In August, the International Association of Industrial Accident Boards and Commissions (IAIABC) will join with Wisconsin to **commemorate the centennial of workers' compensation in the United States.** Leading up to this event, the IAIABC has through various individuals shared reflections on workers' compensation in this country, where it has been and where it is going. Anyone interested in reading these reflections can go to IAIABC.com and click on "reflections."

March 25, 1911, was a Saturday, but in those days a regular workday for many. Near the end of the workday at the Triangle Shirtwaist Factory, a fire broke out on the 8th floor. It spread rapidly. As New York City firefighters began to arrive, it was discovered that the ladders were not long enough to reach the 8th, 9th and 10th floors. In the end, 146 workers died. Most were female immigrants. The majority were in their teens, and the youngest was only eleven. Some jumped to their deaths, while others died from smoke inhalation or the flames. The identities of six were not finally known until just recently. For slightly over 90 years, it remained the largest work related loss of life in a single event in the United States and the single deadliest disaster in New York City. It was surpassed on both fronts on September 11, 2001, when the World Trade Center came crashing down. Many modern workplace laws such as OSHA trace their roots to this tragic event. It is also probable that this event spurred to action and finalization the **enactment of the first workers' compensation acts.** While discussions were already occurring, it is probably not a coincidence that on May 3, 1911, less than two months after the Triangle fire, Wisconsin passed its historical legislation, and New York would follow later that same year. Kentucky passed its first act in 1914. It was found unconstitutional for failing to include provisions making it voluntary, but shortly thereafter **in 1916 with voluntarism recognized, a workers' compensation act existed in Kentucky.**

Workers' Compensation has long been referred to by many in the industry as the great compromise. In part it was designed to place the burden for injuries received on the industry in which they were suffered and not a society as a whole. Robinson v. Lytle, 276 KY 397, 124 SW2d 78 (1939). While primarily impacting employer and employee, the Act also was in the public interest. Morrison v. Carbide and Carbon Chemical Corporation, 278 KY 746, 129 SW2d 547 (1939). For the delivery of reasonably certain benefits in an expeditious manner, the employee gave up the right to pursue the full measure of civil damage. An employee would no longer be required to prove negligence on the part of the employer, but would also not be subject to traditional affirmative defenses. The employee would have the medicals reasonably related to the injury and some degree of wage replacement paid by the employer. As part of the compromise, the employer would no longer be liable for its negligent action or that of co-employees resulting in injury or civil items of damage such as pain and suffering and loss of consortium. It was said by the court in Morrison **that the "compensation law is neither cumulative nor supplemental to the common law with respect to personal injuries growing out of industrial occupations, but it practically abolishes the common law relating to the subject of tortious liability as between the employer and the employee, such as rule of assumed risk, fellow servant and contributory negligence."**

Today all 50 states, Washington, D.C., and U.S. territories have workers' compensation laws. The Federal system has various laws including federal workers' compensation and others more specialized for certain type workers such as railroad workers, crewmen on vessels in navigable waterways and longshoremen. Each state and federal law is unique, but all possess some similarity. Most are impacted by the unique culture existing within the particular jurisdiction. All recognize the need to provide some income to injured workers during their time of recovery and ongoing disabilities. All make provisions to pay for acute and appropriate medical treatment. All compensate obvious, direct and significant traumatic injuries. All provide some element of recovery for those affected by a disease caused by their working environment. However, unlike Kentucky, some do not have coal mines, so benefits for black lung are unnecessary. The amount and extent of income and medical benefits varies greatly from jurisdiction to jurisdiction.

Debates have occurred for years over whether workers' compensation systems should be solely controlled by states or all should meet federally mandated minimums. Most seem to believe state legislatures are in a better position to understand their own unique compensation environment and thus are better able to meet the needs of their citizens.

One hundred years into the great compromise, there have been many statutory changes. **After 95 years of statutory existence, Kentucky's workers' compensation law today has some provisions virtually identical to what was enacted in 1916 while other provisions exist that were never imagined by the initial drafters.** With changes in medical terminology, treatment, diagnosis and the working environment, medical conditions now exist that were not envisioned by employers or employees in the early days of workers' compensation. Certainly, a limit of \$100 maximum for medical services in the 1930's and even \$3500 in the late 1960's makes little sense to us today, but then as now issues exist as to what may be reasonable and necessary for the treatment of a work related condition. In 1938 the maximum weekly income benefit was \$12 per week, in 1973 it was \$81 per week, and for an injury in 2011 it is \$721.97 per week. Some of this change can be attributable to inflation, but modification to statutory provisions has also made an impact. **Whatever the amount, one cannot receive more workers' compensation benefits than what could be earned working.** Over the years, changes in the law have on occasion seemingly favored the employee, while others the employer. Ultimately, most of the goals remain the same and compromise continues to be exhibited.

One hundred years into the great compromise, the same reasons for workers' compensation exist. Workers' compensation is a benefit not just to employers and employees, but to the public at large. It is still true that the best way to control workers' compensation costs is for employers and employees to make the work place safe and secure and for the public at large to encourage them to do so.



Education and Training Partnerships

On June 1, 2011, the Kentucky Labor Cabinet, Construction Partnership Program entered into a site based construction partnership agreement with Messer Construction Co. and the Pikeville Medical Center for the Pikeville Medical Expansion Project in Pikeville, Kentucky. The project involves the construction of a new parking garage and medical office building at the Pikeville Medical Center. The parking garage is 9 floors and approximately 316,000 square feet. The medical office building will have eleven floors. The first floor will be used for parking and support services. Office space will be on three floors. Two floors will contain an outpatient surgery center. The remaining floors will be used as storage. The two structures will be separated by a courtyard; and the medical office building will connect to the existing hospital on floors two through eleven. In addition to the new construction, renovation work will also be taking place on the existing hospital. The estimated cost of the project is \$70,000,000 and is scheduled to be completed in spring, 2013. Mark Brown, Secretary of Labor had this to say about the project; "CPP has proven to be an effective deterrent to workplace injury. We are thrilled that Messer and Pikeville Medical Center are partnering with us and look forward to working with these outstanding companies. "

What is a site based construction partnership?

A site based partnership is a formal agreement between a general contractor and the Kentucky Labor Cabinet's office of Occupational Safety and Health. The construction partnership program is located in the Division of Education and Training. The partnership is a voluntary cooperative agreement to allow quarterly consultative visits to a job site to provide extensive safety and health surveys. The partnership is available to all sub-contractors as well. The intent of the Construction Partnership Program is to provide education and training when applicable to allow the partners to learn about Kentucky OSH standards to protect their employees from injuries and illness.

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Phone 502-564-3070

For submissions and suggestions, please email: mike.donta@ky.gov

No information published herein should be construed as substituting for policy directives sent through regular channels to personnel.

If you would like your name added or removed from our mailing list, please visit our website at labor.ky.gov and choose the "subscribe to our newsletter" link.

About Messer Construction

Messer Construction Co. is a construction manager and general contractor providing leaders for complex commercial building projects. Since 1932, Messer has built a premier reputation through outstanding construction experiences and value with a focus on health care, life sciences and higher education. As an employee-owned company, Messer employs a total of 758 individuals from 9 different regions. In fiscal year 2010, Messer put in place approximately \$526 million in commercial construction. Messer ranks nationally as one of the Top 100 largest contractors and was ranked nationally by Modern Health magazine as one of the Top 20 health care contractors.

About Pikeville Medical Center

Pikeville Medical Center, now affiliated with Cleveland Clinic Heart Surgery, offers more than 300 services ranging from cardiac and cancer care to orthopedic and neurosurgery programs. PMC has been named one of the Best Places to Work in Kentucky for four years. Modern Healthcare ranked PMC the #1 Best Place to work in Kentucky and 7th in the nation. The National Hospital of the Year, PMC is currently embarking on a 100 million dollar expansion, including an 11-story Medical Office Building and a 9-story parking garage. **Pikeville Medical Center's mission is to provide quality regional health care in a Christian environment.**



What's wrong with this picture? Give it some thought. You'll find a recommendation from our Division of OSH Compliance on Page 10.

Open Records On-Line Service In The Works

The DWC Open Records Section is in the process of developing a web based application to allow the public to make requests for copies of documentation. This will allow users to submit a request at any time day or night as opposed to completing a paper form by mail or in person. This application will also allow the user to remit payment by credit card or Automated Clearing House (ACH) Debit.

Currently DWC employees spend a substantial portion of each day, researching, printing, packaging, invoicing and handling funds associated with Open Records requests mailed or faxed from constituents from professional and individual entities. In an effort to reduce **labor costs and expedite the fulfillment of these requests, the Department of Workers' Claims requested an online portal enabling those in need of Workers' Compensation claim** history information to electronically submit their request 24/7. The online portal will capture all requests online and handle all aspects of the request process by logging, routing and managing, calculating and collecting associated fees as well as generate emails and delivery of the requested documents.

This long-awaited endeavor promises to be a time and cost saving measure for DWC **Open Records Staff and provide the convenience of 'anytime' access to forward requests directly** to Open Records and the ability to receive the requested information electronically. Initial planning of the project is nearing completion and the DWC anticipates full implementation by the fall of 2011.

Illegal Paycheck Deductions

The Kentucky Labor Cabinet received an inquiry from a doctor's office last year. This physician was puzzled as to why his patient was required to bear the cost of a drug test initiated each time he was referred to a separate employer by a staffing agency. **The Physician's concerns were well founded. KRS 336.220 expressly prohibits prospective** employers or employers from requiring employees to pay for the cost of medical examination or to pay for the cost of furnishing records, including drug tests and background checks. This Physician passed this information back to his patient who then filed a complaint.

The Labor Cabinet safeguards the identity of all complainants who request anonymity. As a result of this initial investigation the Labor Cabinet has settled three cases with two staffing agencies recovering over \$190,000.00 for thousands of workers. Additionally, the first employer in question was fined \$25,000.00 for violating the terms of the initial settlement agreement.

A large transnational law firm predicted that half of the jobs added to the economy **beginning in 2010 would be through "staffing" or "temp" agencies. That prediction seems** very prescient. Many Kentuckians have a strong desire to work and will accept conditions that are less than ideal. The Labor Cabinet is working hard to ensure the most vulnerable segments of our workforce are treated fairly and in accordance with the safeguards of our labor laws. Unfortunately, some people work under conditions that are unlawful but they either do not know it or are afraid to complain.

We need more people like the inquisitive Physician that took an interest in his patient, a member of his community. The Kentucky Labor Cabinet is here to help and takes pride in looking out for all of Kentucky's workers. **Please call us anytime if you have a question** regarding working conditions for you or your neighbor.

REGISTERED APPRENTICESHIP: One Of Our Best Kept Secrets

The Labor Cabinet, in conjunction with the US Department of Labor, conducted a very successful, Collaborate For Success ACTION CLINIC involving Registered Apprenticeship in May. Participants from the current program sponsors, employee organizations, KCTCS, Kentucky Tech, EKU, the state and regional Workforce Investment Boards, along with the states One Stop Centers, met for three days to review and discuss ways to better promote Registered Apprenticeship across the Commonwealth of Kentucky.



An action plan was developed and partnerships were recognized. The first action item was to form a steering committee to meet and determine training needs within the partner structure and how best to deliver those services throughout each organization. This item will be addressed in August 2011.

The Labor Cabinet looks forward with working with each of these entities to continue to **develop 'one of our best kept secrets'.**

There's an APP for that!

The U.S. Department of labor recently announced the launch of its first application for smart phones, a timesheet to help employees independently track the hours they work and determine the wages they are owed. Available in English and Spanish, users conveniently can track regular work hours, break time and any overtime hours for one or more employers. Glossary, contact information and materials about wage laws are easily **accessible through links to the Web pages of the department's Wage and Hour Division.**

Additionally, through the app, users will be able to add comments on any information related to their work hours; view a summary of work hours in a daily, weekly and monthly format; and email the summary of work hours and gross pay as an attachment.

The free app is currently compatible with the iPhone and iPod Touch. The Labor Department will explore updates that could enable similar versions for other smart phone platforms, such as Android and BlackBerry, and other pay features not currently provided for, such as tips, commissions, bonuses, deductions, holiday pay, pay for weekends, shift differentials and pay for regular days of rest.

For workers without a smartphone, the Wage and Hour Division has a printable work hours calendar in English and Spanish to track rate of pay, work start and stop times, and arrival and departure times.

For more information, visit the Wage and Hour Division's home Web page at <http://www.dol.gov/whd> or call the division's toll-free helpline at 866-4US-WAGE (487-9243).



The Department of Workers' Claims along with the Kentucky Labor Cabinet is participating in the establishment of the Business One Stop Portal, brought about by the passage of Senate Bill 8 in the 2011 General Assembly. This bill requires the Secretary of State, Finance and Administration Cabinet, Cabinet for Economic Development and the Commonwealth Office of Technology and many other state agencies to jointly create a **'business one stop electronic state business portal'** giving businesses in the Commonwealth the ability to log into a web portal and access everything they need to establish a new business, and provide additional information for continuing to do business in the state of Kentucky.

This is a huge undertaking involving a multitude of agencies sharing information, providing methods of how they do business with the stakeholders of the Commonwealth, and determining the criteria of what a business needs to begin operation. **The Governor's Office** is leading the task force for Business One Stop and the first goal is an assessment giving details for the creation, operation and management of the Kentucky Business One Stop Portal by the end of this year. This will include a cost analysis for implementation, cost of creation and maintenance of a call center, recommendations on the roles of the various state agencies regarding everyday operations of the portal, any regulatory or statutory changes that may be necessary, as well as an analysis of ways to streamline the current processes that state agencies currently utilize for submitting paperwork necessary to do business in the Commonwealth. The second goal is the creation of a web site portal by December 31, 2012; at this time, a new business should be able to log into the system **and register with the Secretary of State's Office and the Department of Revenue's tax registration application** should be in the testing phases of implementation.

There are issues to overcome with this project. State agencies of the Commonwealth **have forever operated in 'silos' independent from each other with the freedom to change** their processes. The establishment of this web portal is a giant step in communication both internally between agencies and externally with the businesses in the commonwealth while providing a mechanism to interact in an online environment.



What's wrong with the photo.....Conditions to look for and consider: *From page 7*

- ◆ No fall protection on the platform
- ◆ No fall protection training
- ◆ Platform not attached to lifting device
- ◆ Employees on platform do not have controls
- ◆ Truck operator not in the cab
- ◆ Fork truck may not be approved for lifting personnel
- ◆ No fall protection on the upper scaffold buck
- ◆ Lower scaffold only has cross-bracing and no upper rail.